

APPEAL NO. 032230
FILED OCTOBER 2, 2003

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 12, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease injury with a date of injury of _____; that the claimed injury does not include an injury to the claimant's hands, wrists, shoulders, and cervical area; that the claimant did not have disability; and that the respondent (carrier) did not waive the right to contest compensability of the claimed injury by not timely contesting it in accordance with Section 409.021. The claimant appealed those determinations and the case was remanded to the hearing officer in order for him to take official notice of Texas Workers' Compensation Commission (Commission) records relating to the waiver issue and to clarify whether, based on those records, his decision would remain the same. In the decision on Remand, the hearing officer took official notice of the Commission records in question and ultimately resolved the issues as he had originally. The claimant appeals the hearing officer's decision on remand. The carrier urges affirmance.

DECISION

Affirmed.

The pertinent facts of this case relating to the waiver issue are set out in Texas Workers' Compensation Commission Appeal No. 031458, decided July 23, 2003. The purpose of the remand was to ensure that the hearing officer, who had refused at the initial hearing date to take official notice of Commission records documenting filings by the carrier on the waiver issue, consider those records, clarify whether the records supported or conflicted with the adjuster's testimony that the carrier timely disputed the injury, and resolve the waiver issue. On remand, the hearing officer noted that Commission records do not indicate that a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) was electronically filed by the carrier on August 7, 2002. However, the hearing officer did not perceive the absence of the TWCC-21 filing within the Commission's record to conflict with the adjuster's testimony that the TWCC-21 was indeed filed electronically on August 7, 2002, and concluded that the carrier did not waive the right to contest compensability of the claimed injury. The hearing officer was at liberty to resolve the discrepancy in favor of the carrier based on the adjuster's testimony. See Texas Workers' Compensation Commission Appeal No. 992910, decided February 3, 2000. Accordingly, we affirm the determination that the carrier did not waive the right to contest compensability of the claimed injury. See Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002); Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003.

Section 401.011(34) defines occupational disease as including repetitive trauma injuries. Whether the claimant's activities were sufficiently repetitive to result in an injury

was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). Nothing in our review of the record indicates that the hearing officer's compensability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determinations relating to disability and extent of injury.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**WILLIAM PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge